

Congress of the United States

Washington, DC 20515

December 19, 2019

Majority Leader Mitch McConnell
U.S. Senate
Washington, DC 20515

Minority Leader Charles Schumer
U.S. Senate
Washington, DC 20515

Chairman Lindsay Graham
U.S. Senate
Washington, DC 20515

Ranking Member Dianne Feinstein
U.S. Senate
Washington, DC 20515

Re: Congressional Native American Caucus VAWA Reauthorization Request

Dear Majority Leader McConnell, Minority Leader Schumer, Chairman Graham, and Ranking Member Feinstein:

We are writing today on behalf of the bipartisan Congressional Native American Caucus to express our heightened concerns regarding the Senate's two competing bills (S. 2843 and S. 2920) to reauthorize the Violence Against Women's Act (VAWA). As you enter negotiations for the reauthorization, we ask that you defer to the tribal provisions within S. 2843 and H.R. 1585 as they were carefully drafted and passed the House with bipartisan support to provide essential protections for American Indians and Alaska Natives that upholds the federal trust responsibility to 573 sovereign Native Nations.

When leadership in the House drafted H.R. 1585, there was ample bipartisan efforts to work with tribal leaders, national tribal organizations, advocates, Native survivors, and law enforcement agencies. Additionally, the drafters of H.R. 1585 received substantial input from the Congressional Native American Caucus (CNAC) to ensure that these carefully thought out provisions were included to adequately address the disproportionate amount of violence experienced by tribal members in Indian Country. The final version of the House passed bill works to seek justice for Tribes that have historically lacked public safety resources to protect their members and, if passed into law, will ensure these injustices don't continue to exacerbate the missing and murdered indigenous women crisis in the United States.

According to the National Institute of Justice, American Indian and Alaska Native (AI/AN) women experience murder rates more than ten times the national average and experience rape at a rate of twice the national average. Additionally, four out of five Native American women have faced violence during their lifetime, and over ninety-six percent of this violence is perpetrated by non-Indian offenders who commit these crimes within reservation boundaries. Further, according to the U.S. Department of Justice, more than one-third of the Indian Country cases referred to them are declined, and about 37 percent of the Indian Country cases referred to U.S. Attorneys' Offices are left unprosecuted.

For these reasons, in 2013, Congress implemented legislation enabling sovereign tribal governments to prosecute perpetrators who choose to commit these gender-based crimes against AI/AN women, abuse Native children, or assault law enforcement on tribal lands. However, more needs to be done so these excessive rates of violence don't continue to plague Indian Country resulting in our failure to adequately protect AI/AN women and children in compliance with the trust relationship with Native Nations. In passing H.R. 1585, we worked across the aisle to ensure tribal sovereignty is protected to uphold Congress' trust responsibility and to specifically allow tribal governments to close jurisdictional

loopholes that have long victimized AI/AN women and children. In doing this, we ensured that: VAWA's tribal grant programs cover essential costs to prosecute perpetrators who victimize Native women and children; closes jurisdictional gaps by restoring Tribes' inherent authority to exercise jurisdiction over additional crimes (including sexual violence, stalking, sex trafficking, assault against law enforcement, child abuse and endangerment); expands the Tribal Access to National Crime Information Program (TAP)¹; addresses specific jurisdictional issues for Alaska Native women to expand safety resources; and bolsters response and access to data for missing and murdered indigenous women.

However, provisions included in S. 2920 clearly undermine tribal sovereignty. For instance, S. 2920: creates expansive administrative/oversight requirements for tribal courts that do not apply to any federal, state, municipal, or territorial court in the country; creates unprecedented authority for the U.S. Attorney General to audit tribal courts; destabilizes congressional protections and 50-years of case law for defendants included under the Indian Civil Rights Act (ICRA); fragments basic legal procedural requirements and exhaustion of administrative remedies for federal *habeas corpus* petitioners; and waives tribal sovereign immunity for civil actions in federal courts. Each of these provisions in S. 2920 are unprecedented and contradict decades of well-established legal and legislative precedent.

As Senate leadership continues to move forward with the VAWA reauthorization negotiations, we ask that you defer to the tribal provisions within S. 2843/H.R. 1585, as they contain critical provisions that were carefully drafted to remedy jurisdictional gaps in Indian Country and provide resources to alleviate the crisis of missing and murdered indigenous people in furtherance of the federal government's treaty obligations. The protection of any woman or child, regardless of where they live or what group they belong to, should never be treated as a partisan issue. We respectfully ask that you immediately reach consensus on these critical tribal provisions and pass the carefully thought out bipartisan version of the VAWA reauthorization.

Sincerely,



Tom Cole
Member of Congress



Deb Haaland
Member of Congress



Betty McCollum
Member of Congress



David P. Joyce
Member of Congress



Gwen Moore
Member of Congress



Mike K. Simpson
Member of Congress

¹ TAP is implemented through the U.S. Department of Justice (DOJ) allowing tribal law enforcement to view perpetrators' criminal history and associated criminal *convictions* that have been adjudicated in federal, state or tribal courts. It is important to note that this TAP expansion does not allow tribal law enforcement to adjudicate or make legal decisions on a defendant's criminal convictions or criminal history. It only allows tribal law enforcement to view these legal decisions in the database similarly to any local or state law enforcement database.